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## *Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Case No. 5:20-cv-05799-LHK

**Plaintiff,**

V.

WILBUR L. ROSS, JR., *et al.*,

**DEFENDANTS' RESPONSE TO  
THE COURT'S ORDER RE:  
COMMUNICATIONS WITH  
THE COURT (ECF No. 100)**

## Defendants.

1 Pursuant to this Court's Order of September 12, 2020 (ECF No. 100), Defendants  
 2 respectfully state as follows.

3 1. The Court's Order attached email correspondence that had been received at the  
 4 Court's general inbox. In that correspondence, a Census enumerator named "Stephen Fabian" (at  
 5 stevewavestudio@gmail.com) reported that "this evening I received an email from the census  
 6 instructing enumerators to set out availability at one hour or less." ECF No. 100 at 2. Mr. Fabian  
 7 alleged that this instruction was in violation of the Court's temporary restraining order of  
 8 September 5, 2020 (ECF No. 84).

9 2. Defendants have not yet been able to fully investigate these allegations.

10 3. Defendants note that there has never been a mandate under any census plan  
 11 (meaning the 2020 Plan, the COVID-19 Plan, or the Replan) to pay enumerators for census work  
 12 that does not need to be performed. Or to allow a single enumerator to dictate how census officials  
 13 are to assign work. Per the materials supplied by Mr. Fabian, it appears as if the request for a one-  
 14 hour maximum time allocation resulted from (i) the fact that Mr. Fabian had been assigned to a  
 15 field operations team somewhat unexpectedly; (ii) that there were "very few cases" to assign to  
 16 the enumerators; and (iii) that a supervisor made a decision to distribute the assignments among  
 17 different enumerators in an effort to be "fair." ECF No. 100 at 2-5. This appears, on its face, to  
 18 be a single individual's unhappiness about losing "several hundred dollars" and not receiving the  
 19 work schedule he preferred. *Id.* at 5. In addition, Mr. Fabian's submission also suggests that the  
 20 individual communicating with him was acting while another official was out of the office, perhaps  
 21 an indication that the direction may have been the result of confusion, not purposefulness.

22 4. None of this suggests any effort to violate the Court's September 5, 2020 Order.  
 23 And any reading of the Order that would require Defendants to account for the hours and  
 24 compensation of individual employees (out of a work force of more than 280,000 individuals)<sup>1</sup>  
 25 would, respectfully, illustrate why judicial intrusion upon census operations is inappropriate.

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 28 <sup>1</sup> See <https://www.census.gov/content/dam/Census/newsroom/press-kits/2020/2020-census-weekly-hires.pdf>.

DATED: September 14, 2020

Respectfully submitted,

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/s/ Alexander V. Sverdlov

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1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on the 14th day of September, 2020, I electronically transmitted the  
3 foregoing document to the Clerk of Court using the ECF System for filing.

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5                   */s/ Alexander V. Sverdlov*  
6                   ALEXANDER V. SVERDLOV

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